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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,259	03/02/2004	Andrew L. Van Brocklin	200316559-1	4004

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

TSIDULKO, MARK

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/792,259	Applicant(s) VAN BROCKLIN ET AL.	
	Examiner Mark Tsidulko	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-22 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 18-22 is/are allowed.
 6) ☒ Claim(s) 1-6 and 9-16 is/are rejected.
 7) ☒ Claim(s) 7 and 8 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The submission of amendment filed on 6/29/2006 is acknowledged. At this point claim 17 has been canceled and the remaining claims left unchanged. Thus, claims 1-16 and 18-22 are at issue in the instant application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11, 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Smallegan (US 3,968,355).

Referring to Claims 1-3, 11 Smallegan discloses (Figs.1, 2) a lighting device having a light source [18], a control circuit including a sensor [23] that senses a hue of the ambient light (col.2, lines 31, 32). The lighting device modulates the output light with the ambient light level, producing a compensating light to adjust the ambient light when the room light level is the darkest (col.2 lines 35-38).

Referring to Claim 4 Smallegan discloses (Fig.2) a lighting device using an incandescent bulb, which produces, as well known in the art, a white light.

Referring to Claim 5 Smallegan discloses (Fig.4) a lighting device having a condenser lens [88].

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Referring to Claim 6 Smallegan discloses (Fi.2) an optical light-modulating device [11].

Referring to Claim 14-16 Smallegan discloses (Figs.1, 2) a lighting device having a light source [18], a control circuit including a sensor [23] that senses a hue of the ambient light (col.2, lines 31, 32). The lighting device modulates the output light with the ambient light level, producing a compensating light to adjust the ambient light when the room light level is the darkest (col.2 lines 35-38).

The method claims 14-16 are considered as inherently disclosed by Smallegan, as the cited claims merely recite “determining”, “compensating” and “applying” as the claimed steps, such steps being necessarily performed to obtain structure of Smallegan.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smallegan (US 3,968,355).

Smallegan discloses the instant claimed invention except for the source of the ambient light.

It is clearly understood that the device can modulate the ambient light produced by any type of the light source, natural or artificial.

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It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the device of Smallegan, for modulating the ambient light produced by any type of the source.

Allowable Subject Matter

Claims 7, 8, 12, 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Referring to Claim 7 the prior art of record fails to show a lighting apparatus wherein hue modulating device is a front-lit device.

Referring to Claim 8 the prior art of record fails to show a lighting apparatus wherein hue modulating device is a back-lit device.

Referring to Claims 12, 13 the prior art of record fails to show a lighting apparatus including a Fabry-Perot interference device including a first reflector, a second reflector and a flexure that controls spacing between the reflectors.

Claims 18-22 are allowed.

The following is an examiner's statement of reasons for allowance:

Referring to Claim 18 the prior art of record fails to show a lighting apparatus having a means for modulating a hue of the compensating light into the ambient light including a plurality of spaced reflectors.

Claims 19-22 are allowed as claims depended on claim 18.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments filed 6/29/2006 have been fully considered but they are not persuasive.

Applicant argues, that brightness of the light is different characteristic than hue.

In response, these characteristics are relative, the hue of the light depends on brightness, it is well known and is confirmed, for example, in 2003/0086001 (page 2, [0016]), 2005/0248551 ([0057]) and 2005/0065687 ([0090]). Hue of the light is changed (lighter or darker) in response to brightness of the light.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571) 272-2384. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.T.
September 14, 2006



Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800